

**BEFORE THE  
UNITED STATES DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION**

**IN THE MATTER OF:**

**Auto-Chlor System of Washington, Inc.  
(Respondent)**

**PHMSA Case No.: 06-0140-SB-SW**

**Docket No.: PHMSA-06-25125 -1**

**COMPROMISE ORDER**

**I assess Respondent a civil Penalty of \$315 for a violation of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180.**

**I. Summary**

Respondent: Auto-Chlor System of Washington, Inc.  
450 Ferguson Drive  
Mountain View, CA 94043  
Attn: Mr. Jefferey Soens

**II. Finding**

This matter comes before me after Respondent and the Pipeline and Hazardous Materials Safety Administration (PHMSA) agreed to a disposition of this civil enforcement action. I have reviewed the Agreement and I find that the terms as outlined therein are in the best interest of justice. Based on the Compromise Agreement (Agreement), which is incorporated in its entirety and attached as Addendum A to this Order, I impose a civil penalty of \$315. Respondent must pay the civil penalty in accordance with the instructions contained in Addendum B to this Order.

All of the terms and conditions of the Agreement shall be given the full force and effect of an Order issued pursuant to the Federal hazardous materials transportation law, 49 U.S.C. § 5101, et seq., or the Hazardous Materials Regulations, 49 C.F.R. Parts 171 – 180.

It is so Ordered,

8/30/06

Date



Krista L. Edwards

Chief Counsel

Pipeline and Hazardous Materials Safety  
Administration

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**IN THE MATTER OF:**

**Auto-Chlor System of Washington, Inc.  
(Respondent)**

**PHMSA Case No.: 06-0140-SB-SW  
Docket Number: PHMSA-06-25125**

Issue Date: 06/22/06

Response Date: 07/06/06

**COMPROMISE AGREEMENT**

**I. Parties**

The Parties to this Compromise Agreement (Agreement) are:

**Auto-Chlor System of Washington, Inc.** (Respondent), a shipper of hazardous materials for transportation in commerce, located in Mountain View, CA (Mailing address: 450 Ferguson Drive, Mountain View, CA 94043. Attn.: Mr. Jefferey Soens, Corporate Operations)

and

**The Pipeline and Hazardous Materials Safety Administration** (PHMSA), a modal Administration of the United States Department of Transportation.

**II. Authority/Jurisdiction**

A. The Parties enter into this agreement under authority of 49 U.S.C. § 5123(e) and 49 C.F.R. § 107.327(a)(1).

B. Respondent acknowledges that:

(1) It is a regulated entity subject to the Hazardous Materials Regulations (HMR) and to the authority of (a) the Secretary of Transportation, (b) the PHMSA's Associate Administrator for Hazardous Materials Safety, and (c) PHMSA's Office of the Chief Counsel (49 U.S.C. § 5103(b) and 49 C.F.R. § 107.301);

(2) PHMSA has sufficient proof to show by a preponderance of the evidence that Respondent violated the Federal regulations listed in Section V below; and

(3) It received proper notice of PHMSA's action in this proceeding.

### III. Background

On March 16, 2006, an inspector from PHMSA's Office of Hazardous Materials Enforcement (OHME) conducted a routine compliance inspection at Respondent's Sacramento, CA, facility. Respondent fills, ships, and transports Class 3 and 8 materials in 5-gallon jerricans and 4x1 gallon boxes. Pursuant to the investigative authority under 49 U.S.C. § 5121 and 49 C.F.R. § 107.305, the inspector audited Respondent's transportation-related activities for hazardous materials. The inspector checked Respondent's shipping documentation and issued an Exit Briefing to Respondent's representative.

During the compliance inspection, the inspector observed Respondent had offered hazardous materials for transportation in commerce in quantities requiring to be placarded. Respondent, however, had not developed and implemented a Security Plan. The inspector also observed that Respondent had failed to provide safety awareness hazmat training to its employees.

The inspector submitted a report on his inspection and investigation to OHME's Southwest Region Chief, attaching documentation on Respondent's transportation-related activities. The Region Chief reviewed the report for accuracy and sufficiency of evidence. Based on this review, the Region Chief referred the matter to PHMSA's Office of the Chief Counsel with a recommendation that it initiate a civil penalty action against Respondent pursuant to 49 C.F.R. § 107.311.

The alleged violations involved are listed in Section V below. Based on the gravity of these violations, the Office of Chief Counsel issued a Notice of Probable Violation (Notice) to Respondent. The Notice proposed a civil penalty in the amount of \$3,825 after a \$1,175 reduction for Respondent's corrective actions, which it had submitted in response to the exit briefing. PHMSA had assessed the civil penalty using the Penalty Guidelines found at 49 C.F.R. Part 107, Subpart D, Appendix A, Section II.

### IV. Basis of Agreement

A. Corrective Action. In its March 24, 2006, and April 17, 2006, correspondence, Respondent described the measures it took following the hazardous materials safety compliance inspection to correct the violations alleged below and to prevent future violations of the HMR. The following is a summary of Respondent's corrective actions:

- completing its facility's security risk assessment and developing a Security Plan;
- providing confirming documentation on its security plan; and
- initiating to provide the hazmat Security Awareness training.

In its July 6, 2006 response to the Notice, Respondent reiterated the corrective actions it had taken to be in compliance with the HMR and stated it had provided Security Awareness training to its hazmat employees.

Although on the day of the inspection, Respondent did not have a written security plan for the safety of hazardous materials it was shipping, it took immediate action after

the compliance inspection to develop a security plan in accordance with the elements described at 49 C.F.R. 172.802. Subsequently, before the Notice was issued to Respondent, it implemented the plan and provided training to its employees. Respondent confirmed this fact by providing to PHMSA evidence of its completed corrective measures.

B. Informal Conference. Parties did not hold an informal conference as they were to resolve issues through correspondence.

PHMSA has concluded in this case that it is more appropriate to issue a warning to Respondent for its failure to develop and adhere to a security plan than to assess a civil penalty for that probable violation in light of Respondent's corrective actions. In issuing this warning on the security plan probable violation, PHMSA is not making a finding of general compliance by Respondent with the HMR. PHMSA will ascertain compliance on security plan requirements and any other pertinent requirement through a subsequent visit.

**V. Based on all the evidence at hand, the parties now agree to the compromise penalty amounts listed below:**

Viol. No.	HMR Violation	NOPV Penalty Amount	Compromise Penalty Amount
1	Offering for transportation in commerce hazardous materials, various Class 8 materials, in a quantity requiring placarding under the provisions of 49 C.F.R. Part 172, Subpart F, when Respondent had not developed and implemented a security plan, in violation of 49 C.F.R. §§ 171.2(b) and 172.800(b).	\$3,375	Warning
2	Allowing employees to perform a function subject to the HMR, when the employee's records of training were not created and retained, in violation of 49 C.F.R. §§ 171.2(b), 172.702(b), 172.704(a)(4), and 172.704(d).	\$450	\$315
Total		\$3,825	\$315

**VI. Factors Considered in Determining the Civil Penalty**

In determining the amount of a civil penalty, PHMSA considered the following statutory criteria (49 U.S.C. § 5123(c)):

- A. The nature, circumstances, extent, and gravity of the violations;
- B. The degree of culpability and history of prior violations;
- C. Respondent's size, Respondent's ability to pay the penalty, and its ability to continue to do business; and
- D. Other matters as justice may require.

## VII. Terms and Conditions

A. Respondent agrees to pay the sum of \$315 within 30 days of the date of the final Order to be issued.

B. By entering into this agreement, Respondent waives:

1. Any right to present further written or oral explanations, information, and arguments in this matter;
2. Any right to Administrative appeal; and
3. Any right to seek judicial review or otherwise contest or challenge the validity of this Agreement or the Notice associated with this matter.

C. This Agreement resolves only the violation noted in this case as referenced in Section V of this agreement. This violation will constitute a prior violation under 49 U.S.C. § 5123 if Respondent commits any future violations of the Federal hazardous material transportation law, 49 U.S.C. § 5101 *et seq.*, the HMR, or any exemption, or order issued thereunder.

D. After issuance of the Compromise Order, Respondent must pay the civil penalty in accordance with the terms of this Agreement. Upon receipt of Respondent's final payment, the Chief Counsel will close this case with prejudice to the Respondent (49 C.F.R. § 107.327(a)(1)(ii)).

## VIII. Miscellaneous Provisions

A. By signing this Agreement, Respondent or its representative warrants to have read the agreement and understood its terms and conditions.

B. The individuals signing on behalf of the Respondent and PHMSA represent that they are authorized to sign and have authority to enter into this Agreement.

C. Respondent's failure to sign and return this agreement within ten (10) days from its receipt will result in the withdrawal of this Agreement and the Chief Counsel will issue an Order pursuant to 49 C.F.R. §§ 107.317(d), for the full amount of the penalty proposed in the Notice.

D. After Respondent returns this signed Agreement, the undersigned counsel for PHMSA will recommend that PHMSA's Chief Counsel adopt the terms of this Agreement by issuing a Compromise Order (49 C.F.R. § 107.327(a)(1)). The terms of this Agreement constitute an offer of compromise until accepted by the Chief Counsel.

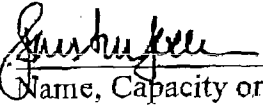
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E. Respondent must return the signed Agreement to:


Anil K. Mehta  
United States Department of Transportation  
Pipeline and Hazardous Materials Safety Administration  
400 Seventh Street, S.W., Room 8417  
Washington, D.C. 20590-0001

**Respondent (Auto Chlor System of Washington, Inc.)**

Federal Tax ID #: 91-0832878<sup>1</sup>

By:  CORPORATE OPERATIONS Date: 08/18/06  
Name, Capacity or position

**Pipeline and Hazardous Materials Safety Administration**

By:  Date: 08/18/06  
Anil K. Mehta, Attorney

**ELECTRONIC MAIL**

<sup>1</sup> The Taxpayer Identifying Number is required by 31 U.S.C. § 7701(c)(3). PHMSA will use this number for purposes of collecting and reporting on any delinquent amounts arising out of this agreement.

## ***Payment Information***

### Due date.

Respondent must pay a total civil penalty of \$315 within 30 days of the date of this Order.

### Payment Method.

Respondent must pay the civil penalty by one of the following: (1) wire transfer, (2) certified check or money order, or (3) credit card via the Internet.

(1) Wire Transfer.

Detailed instructions for sending a wire transfer through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury are contained in the enclosure to this Order. Please direct questions concerning wire transfers to:

AMZ-300  
Federal Aviation Administration  
Mike Monroney Aeronautical Center  
P.O. Box 25082  
Oklahoma City, OK 73125  
Telephone (405) 954-8893

(2) Check or Money Order.

Make check or money order payable to "U.S. Department of Transportation" (include the Ref. No. of this case on the check or money order) and send to:

AMZ-300  
Federal Aviation Administration  
Mike Monroney Aeronautical Center  
P.O. Box 25082  
Oklahoma City, OK 73125.

(3) Credit Card.

To pay electronically using a credit card, visit the following website address and follow the instructions:

<https://www.pay.gov/paygov/>



Interest and Administrative Charges.

If Respondent pays the civil penalty by the due date, no interest will be charged. If Respondent does not pay by that date, the FAA's Financial Operations Division will start collection activities and may assess interest, a late-payment penalty, and administrative charges under 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 49 C.F.R. § 89.23.

The rate of interest is determined under the above authorities. Interest accrues from the date of this Order. A late-payment penalty of six percent (6%) per year applies to any portion of the debt that is more than 90 days past due. The late-payment penalty is calculated from the date Respondent receives the Order.

Treasury Department Collection.

FAA's Financial Operations Division may also refer this debt and associated charges to the U.S. Department of Treasury for collection. The Department of the Treasury may offset these amounts against any payment due Respondent. 31 C.F.R. § 901.3.

Under the Debt Collection Act (see 31 U.S.C. § 3716(a)), a debtor has certain procedural rights prior to an offset. You, as the debtor, have the right to be notified of: (1) the nature and amount of the debt; (2) the agency's intention to collect the debt by offset; (3) the right to inspect and copy the agency records pertaining to the debt; (4) the right to request a review within the agency of the indebtedness and (5) the right to enter into a written agreement with the agency to repay the debt. This Order constitutes written notification of these procedural rights.

**INSTRUCTIONS FOR ELECTRONIC FUNDS TRANSFER TO  
THE FEDERAL AVIATION ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION**

1. <b><u>RECEIVER'S ABA NO.</u></b> 021030004	2. <b><u>TYPE SUBTYPE</u></b> (provided by sending bank)
3. <b><u>SENDING BANK ARB NO.</u></b> (Provided by sending bank)	4. <b><u>SENDING BANK REF NO.</u></b> (Provided by sending bank)
5. <b><u>AMOUNT</u></b>	6. <b><u>SENDING BANK NAME</u></b> (Provided by sending bank)
7. <b><u>RECEIVER NAME:</u></b> TREAS NYC	8. <b><u>PRODUCT CODE</u></b> (Normally CTR, or as provided by sending bank)
9. <b><u>BENEFICIARY (BFN) - AGENCY LOCATION CODE</u></b> <b><u>BNF=/ ALC 69-14-0001</u></b>	10. <b><u>REASONS FOR PAYMENT</u></b> Example: PHMSA - Case # / Ticket Number/Pipeline Assessment number

**INSTRUCTIONS:** You, as sender of the wire transfer, must provide the sending bank with the information for Block (1), (5), (7), (9), and (10). The information provided in blocks (1), (7), and (9) are constant and remain the same for all wire transfers to Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

**Block #1 - RECEIVER ABA NO.- "021030004"**. Ensure the sending bank enters this nine-digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

**Block #5 - AMOUNT** - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. EXAMPLE; \$10,000.00

**Block #7 - RECEIVER NAME - "TREAS NYC."** Ensure the sending bank enters this abbreviation; it must be used for all wire transfer to the Treasury Department.

**Block #9 - BENEFICIARY- AGENCY LOCATION CODE -"BNF=/ALC69140001"**  
Ensures the sending bank enters this information. This is the Agency Location Code for Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

**Block #10 - REASON FOR PAYMENT - "AC-payment for PHMSA Case # / To**  
ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number, and country."

**Note:** - A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You, as the sender, can assist this process by notifying, at the time you send the wire transfer to the General Accounting Division (405) 954-8893.

## CERTIFICATE OF SERVICE

AUG 30 2006

This is to certify that on \_\_\_\_\_, the undersigned served in the following manner the designated copies of this Order with attached addendums to each party listed below:

Mr. Jefferey Soens, Corporate Operations  
Auto Chlor System of Washington, Inc.  
450 Ferguson Drive  
Mountain View, CA 94043

Original Order  
Certified Mail-Return Receipt

Mr. Raymond LaMagdelaine, Acting Chief  
Office of Hazardous Materials Enforcement  
400 Seventh Street, S.W.  
Washington, D.C. 02590-0001

One PDF Copy  
Electronic Mail

Mr. Billy Hines, Chief  
Hazardous Materials Enforcement Office  
Southwest Region, PHH-45  
8701 S. Gessner Road Suite 1110  
Houston, TX 77074

One PDF Copy  
Electronic Mail

Anil K. Mehta, Attorney  
Pipeline and Hazardous Materials  
Safety Administration  
400 Seventh Street, S.W.  
Washington, DC 20590-0001

One Copy to Case File

U.S. DOT Dockets  
U.S. Department of Transportation  
400 Seventh Street, S.W., RM PL-401  
Washington, D.C. 20590

One Copy  
Personal Delivery

AUG 30 2006

Dated: \_\_\_\_\_

  
\_\_\_\_\_